

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY 

TEXAS STATE LULAC; VOTO LATINO,

Plaintiffs,

v.

BRUCE ELFANT, in his official capacity
as the Travis County Tax Assessor-
Collector; JACQUELYN CALLANEN, in
her official capacity as the Bexar County
Elections Administrator; ISABEL
LONGORIA, in her official capacity as
the Harris County Elections
Administrator; YVONNE RAMÓN, in her
official capacity as the Hidalgo County
Elections Administrator; MICHAEL
SCARPELLO, in his official capacity as
the Dallas County Elections
Administrator; LISA WISE, in her official
capacity as the El Paso County Elections
Administrator,

Defendants,

And

KEN PAXTON, in his official capacity of
Attorney General of Texas,

[Proposed] Intervenor-Defendant.

Case No. 1:21-cv-00546-LY

**TEXAS ATTORNEY GENERAL KEN PAXTON'S
MOTION TO INTERVENE**

Rule 24(a)(1) of the Federal Rules of Civil Procedure requires a court to “permit anyone to intervene who . . . is given an unconditional right to intervene by federal statute . . .” Fed. R. Civ.

P. 24(a)(1). Attorney General Ken Paxton (OAG) meets the requirements for an unconditional

right to intervene under 28 U.S.C. § 2403(b), and asserts that the interests of the State and its citizens are best served by allowing the OAG to weigh in on the constitutional questions raised by Plaintiffs' lawsuit—interests already recognized by federal statute and rules requiring OAG to be notified and granted an opportunity to speak for the interests of the State.

Because OAG meets the statutory requirements for mandatory intervention, OAG respectfully moves this Court to grant this motion and permit OAG to intervene and present argument on the constitutionality of the statutes Plaintiffs challenge in this action.

ARGUMENT

I. OAG Meets the Requirements for Mandatory Intervention

Granting permission to intervene is mandatory for anyone who is given an unconditional right to intervene by a federal statute. Fed. R. Civ. P. 24(a)(1). OAG has an unconditional right to intervene pursuant to 28 U.S.C. § 2403(b) because (1) this lawsuit does not include the State or any of its agencies, officers or employees as a party, and (2) the constitutionality of the Texas Elections Code, a set of laws affecting the public interest, has been drawn into question. Because the OAG meets the statutory requirements of 28 U.S.C. § 2403(b), OAG has a statutory right to “intervene for the presentation of evidence . . . and for argument on the question of constitutionality.”

A. This motion is timely.

Plaintiffs filed this suit in federal court on June 22, 2021. *See* ECF 1. Contemporaneously, Plaintiffs filed a notice pursuant to Rule 5.1 of the Federal Rules of Civil Procedure styled “*Plaintiffs’ Rule 5.1 Notice of Constitutional Question*”. *See* ECF 6. Rule 5.1 allows the attorney general to intervene “within 60 days after the notice is file or after the court certifies the challenge,

whichever is earlier.” Fed. R. Civ. P. 5.1(c). The 60th day to intervene does not expire until August 23, 2021. Accordingly, this motion is timely filed.

B. No State entity is a party.

The named defendants to this action do not include either the State of Texas or any of its agencies. Instead, the named defendants include a county tax-assessor collector and five county elections administrators. ECF 1 at ¶¶ 22-27. None of the named defendant officials are recognized as state officials or employees under Texas law. County tax-assessor collectors are county officials. *See* Tex. Loc. Gov’t Code § 159.032; *see also Hartford Cas. Ins. Co. v. Price*, 435 F.Supp.2d 566, 572-74 (N.D. Tex. June 19, 2006) (holding that the Tarrant County Tax-Assessor Collector’s Office is not an arm of the state of Texas). Similarly, the position of county election administrator is a county-level position that the Texas Legislature has granted county commissioners’ courts the discretion to create for the benefit of a county. *See* Texas Elec. Code § 31.031 (“The commissioners court by written order may create the position of county elections administrator *for the county.*” (emphasis added)).

C. This suit draws into question the constitutionality of Texas statutes and the State and its citizens have an interest in defending them.

Plaintiffs make no secret of their intention to challenge the constitutionality of Texas’s voter registration laws. *See* ECF 6 (Plaintiffs’ notice styled “*Plaintiffs’ Rule 5.1 Notice of Constitutional Question*”). This suit specifically draws into question the constitutionality of amendments to the Texas Election Code through Senate Bill 1111 (SB 1111). ECF 1 at ¶¶ 6-12, 52-78. SB 1111 amends Chapters 1 and 15 of the Texas Elections Code pertaining to state voter registration requirements, amendments the plaintiffs contend violate the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution. *Id.*

Texas has an interest in making its views known on the constitutional questions raised in this case, an interest shared broadly by the citizens of this State, as recognized in federal law. *See, e.g.,* 28 U.S.C. § 2403(b) (requiring certification of constitutional challenges to the attorney general of the State); *see also Finch v. Miss. State Med. Ass'n, Inc.*, 585 F.2d 765, 779 (5th Cir. 1978) (citing *Thatcher v. Tennessee Gas Trans. Co.*, 180 F.2d 644, 648 n. 7 (5th Cir. 1950)); *see also Connecticut v. Doeher*, 501 U.S. 1, 7 n. 3 (1991) (noting that state intervened in appeal); *Bridges v. Phillips Petrol Co.*, 733 F.2d 1153, 1156 n. 7 (5th Cir. 1984) (certifying constitutional question to state attorney general to provide State with opportunity to petition for rehearing after noting district court's failure to certify); *see also* 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1915 (2d ed.1986); Note, *Federal Intervention in Private Actions Involving the Public Interest*, 65 Harv. L. Rev. 319, 321–324 (1951).

II. Texas Should Be Heard

Disposing of this action without the State of Texas having a say will impair the State's interests. Passing judgment upon the constitutionality of a state statute without permitting the State's chief legal officer to be heard on those weighty questions undeniably impairs the State's interests, and therefore, the interests of Texas's citizens.

What's more, permitting this intervention will not harm any party to this litigation. The case is at its earliest stages; the Defendants have not yet answered. Accordingly, neither Plaintiffs nor Defendants will be prejudiced by this intervention. In contrast, Texas would be irreparably harmed if its statute is held unconstitutional, especially if the Court did so without hearing from OAG. *See Maryland v. King*, 133 S. Ct. 1, 2-3 (Roberts, J., in chambers) (quoting *New Motor Vehicle Bd. Of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)).

Lastly, pursuant to Local Rule CV-7, counsel for the OAG emailed counsel for Plaintiffs and Defendants on August 11 & 12, 2021. Counsel for Plaintiffs, the El Paso County Elections Administrator, the Harris County Elections Administrator, and the Travis County Tax Assessor-Collector declined to take a position on the motion, and counsel for the Dallas County Elections Administrator and the Bexar County Elections Administrator did not respond to the correspondence. Thus, no party has expressed opposition to this motion at this time.

CONCLUSION

The Texas Office of the Attorney General, by and through Attorney General Ken Paxton, prays that this Motion to Intervene be granted. A proposed Answer in Intervention is attached.

Dated: August 12, 2021.

Dated: August 12, 2021

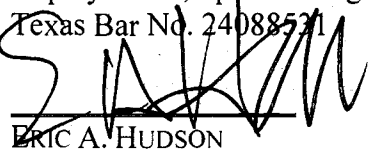
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Respectfully submitted.

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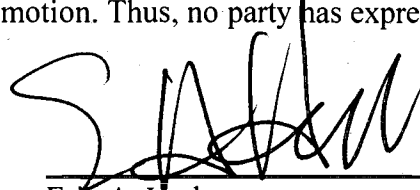
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*Counsel for Intervenor-Defendant Ken Paxton, in his
official capacity as Texas Attorney General*

CERTIFICATE OF CONFERENCE

I certify that on August 11 & 12, 2021, I conferred with counsel for the Plaintiffs and Defendants via electronic mail. As noted above, Counsel for Plaintiffs, the El Paso County Elections Administrator, the Harris County Elections Administrator, and the Travis County Tax Assessor-Collector declined to provide a position on this motion, and the balance of the parties did not respond to a request for their position on the motion. Thus, no party has expressed opposition to this motion at this time.


Eric A. Hudson
Counsel for Intervenor-Defendant

CERTIFICATE OF SERVICE

I certify that on August 13, 2021, after receiving file-stamped copies from the Court, I will serve the foregoing document via electronic mail and via U.S. Postal Service to the following:

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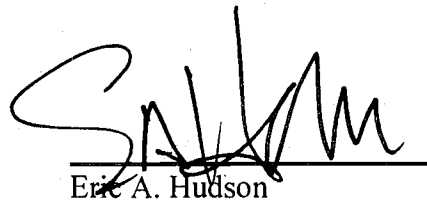
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A handwritten signature in black ink, appearing to read "Eric A. Hudson", written over a horizontal line.

Eric A. Hudson

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